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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the agreement between the European Union and its Member States and Iceland concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its Member States and Iceland in the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

These proposals concern Council decisions, to be adopted pursuant to Article 218 (5) and (6) TFEU, to sign and conclude the agreement between the Union, the Member States and Iceland concerning Iceland's participation in the joint fulfilment of commitments of the Union, the Member States and Iceland in the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

In December 2012, at the Doha Climate Change Conference, the 192 Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) adopted an amendment to the Kyoto Protocol (the Doha Amendment)¹. The Doha Amendment establishes a second commitment period under the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020, with legally-binding emission reduction commitments for the Parties listed in its Annex B. Among these Parties are the Union, the Member States and Iceland.

Article 4 of the Kyoto Protocol allows Parties to fulfil their commitments jointly. The Union and the fifteen Parties that were Member States when the Kyoto Protocol was signed in 1997 chose to do so for the first commitment period (2008-12), and agreed on/set out the terms of their joint fulfilment for the first commitment period when they ratified the Protocol in 2002.² The Doha Amendment³, and the statement made by the Union, the Member States and Iceland upon its adoption,⁴ express the intention of these Parties to fulfil their reduction targets under the second commitment period jointly. The Commission proposed a Council Decision on the conclusion of the Doha Amendment to the Kyoto Protocol to the UNFCCC and the joint fulfilment of commitments thereunder in November 2013.⁵ This proposal is currently under discussion.

The intention to jointly fulfil the commitments in the second commitment period of the Kyoto Protocol with the European Union, its Member States and Iceland dates back to 2009. In a letter to the Presidency of the Council of the European Union dated 3 June 2009, Iceland requested formal talks on announcing a joint fulfilment of their commitments with the European Union and its Member States in a second commitment period of the Kyoto Protocol. The Council, at its meeting on 15 December 2009, welcomed this request and invited the Commission to 'present a recommendation for the opening of the necessary negotiations with Iceland that is in line with the principles and criteria set out in the EU's Climate and Energy Package'.⁶

¹ Decision 1/CMP.8, adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2012/13/Add.1

² Council Decision 2002/358/CE of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, OJ L 130, 15.5.2002, p.1.

³ See footnotes 4, 6 and 8 attached to the quantified emission limitation or reduction commitments inscribed for the Union, the Member States, Croatia and Iceland in the third column of Annex B (Article 1 of the Doha Amendment) which state that these commitments "are based on the understanding that these will be fulfilled jointly".

⁴ The full text of this statement is reflected in paragraph 45 of the Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its eighth session, held in Doha from 26 November to 8 December 2012 FCCC/KP/CMP/2012/13.

⁵ COM(2013)768 of 6 November 2013.

⁶ Council Conclusions of 15 December 2009 on Joint Fulfilment Agreement with Iceland with regard to a future international climate agreement.

The Commission presented its recommendation for a Council Decision authorising the opening of negotiations with Iceland to the Council in June 2013. In December 2013, the Council gave the Commission a mandate to open, on behalf of the Union, negotiations with Iceland on an agreement that establishes the terms of joint fulfilment concerning Iceland's participation in the joint fulfilment of commitments by the Union, the Member States and Iceland. The representatives of the Member States in the Council also gave a mandate to the Commission to negotiate this agreement, on behalf of the Member States, with regard to areas falling in the competence of Member States. These negotiations have been conducted, in line with the negotiating directives, on the basis of Article 218 of the Treaty on the Functioning of the European Union and resulted in the agreement attached to this proposed Decision.

2. THE AGREEMENT WITH ICELAND

The agreement with Iceland attached to this proposed Decision sets out the terms governing Iceland's participation in the joint fulfilment of commitments by the Union, its Member States and Iceland. It does not establish any obligations for the Union or its Member States.

Iceland's participation in the joint fulfilment

Iceland's participates in the joint fulfilment on the same basis as that of the Member States. Iceland's emission level, identical to its assigned amount, will relate to Iceland's emissions from gases and sectors covered under the Kyoto Protocol's second commitment period but that are not covered under the EU's greenhouse gas emissions trading system (Directive 2003/87/EC⁷).

[insert text on Iceland's assigned amount, once determined]

The agreement with Iceland will, in its Annex II, contain the same terms of joint fulfilment that are also laid down in an annex Annexed to the Council Decision on the conclusion of the Doha Amendment to the Kyoto Protocol to the UNFCCC and the joint fulfilment of commitments thereunder.

Application of relevant EU legislation to Iceland

As Parties to the Kyoto Protocol, the Union and the Member States are subject to a number of monitoring, reporting and verification requirements under the Kyoto Protocol. For Parties that have agreed to fulfil their commitments jointly, some of this information needs to be submitted jointly. As a consequence, the Commission will require information from Iceland to enable the Union to fulfil its reporting commitments. Moreover, Iceland will need to participate in the registry system of the Union and its Member States that are relevant for the fulfilment of obligations under the Kyoto Protocol. This requires Iceland to apply Union legislation that is not applicable to third countries (including the Parties to the European Economic Area) , especially in relation to the monitoring, reporting and verification of emissions as well as with regard to the operation of a registry and the accounting for transactions related to the implementation of commitments of the Union, its Member States and Iceland in the second commitment period of the Kyoto Protocol in line with the terms of joint fulfilment and the internationally agreed rules.

The agreement contains, in its Annex I, a list of Union legislation that shall be binding upon Iceland. It also provides for a procedure to amend this list, to ensure that Iceland's

⁷ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

participation in the joint fulfilment and follows the same rules and responsibilities as that of Member States, in line with internationally agreed requirements.

Joint Fulfilment Committee

The agreement with Iceland provides for the establishment of a Joint Fulfilment Committee, which ensures the effective implementation and operation of the agreement. This committee consists of representatives of the Union, the Member States and Iceland and takes decisions by consensus. It may take decisions on the application of relevant Union legislation to Iceland and carries out exchanges of views and information related to the implementation of the terms of the joint fulfilment. Its meetings will be arranged, whenever possible, adjacent to those of the Climate Change Committee, established in accordance with Article 26 of Regulation 525/2013⁸.

Duration and termination of the agreement with Iceland

The agreement with Iceland is concluded for a limited time period, until all matters related to the implementation of the second commitment period will have been completed. This is in line with Article 4 of the Kyoto Protocol which requires any Parties' agreement to jointly fulfil their commitments to remain in operation for the duration of the respective commitment period.

In case of a breach by Iceland, or objection by Iceland to amend the list of legal acts with application in Iceland according to this agreement, Iceland will be individually responsible to account for all of its greenhouse gas emissions covered by the Kyoto Protocol, including those under the scope of the EU's greenhouse gas emissions trading system.

This agreement has no budgetary implications for the Union.

⁸ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision NO 280/2004/EC.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Commission has negotiated, on behalf of the Union, an agreement between the European Union and its Member States and Iceland concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its Member States and Iceland in the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change ('the agreement').
- (2) The Kyoto Protocol to the United Nations Framework Convention on Climate Change ("the Protocol") entered into force on 16 February 2005 and contains legally binding emission reduction commitments for its first commitment period, from 2008 to 2012, for Parties listed in its Annex B. The Union and the Member States ratified the Protocol on 31 May 2002, and agreed to fulfil its commitments under the first commitment period jointly.⁹ Iceland ratified the Protocol on 23 May 2002.
- (3) At the Doha Climate Conference in December 2012, all Parties to the Protocol agreed on the Doha Amendment which establishes a second commitment period of the Protocol (starting on 1 January 2013 and ending on 31 December 2020). The Doha Amendment amends Annex B of the Protocol, setting out further legally-binding mitigation commitments for Parties listed in that Annex for the second commitment period, and amending and further elaborates provisions on the implementation of Parties' commitments during the second commitment period.
- (4) The targets for the European Union, its Member States and Iceland are inscribed in the Doha Amendment with a footnote stating that these targets are based on the understanding that these will be fulfilled jointly, in accordance with Article 4 of the Kyoto Protocol.¹⁰ The Union, the Member States and Iceland also issued a joint

⁹ Council Decision 2002/358/CE of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, OJ L 130/1, 15.5.2002, p. 1.

¹⁰ Footnote 4 to Annex B of the Protocol, as amended by the Doha Amendment.

declaration upon the adoption of the Doha Amendment¹¹, expressing their intention to fulfil their commitments in the second commitment period jointly. The declaration was agreed during an ad hoc meeting of EU Ministers in Doha and endorsed by the Council on 17 December 2012.¹²

- (5) In the same declaration, the Union, the Member States and Iceland also stated, in line with Article 4(1) of the Kyoto Protocol, which allows Parties to fulfil their commitments under Article 3 of the Protocol jointly, that Article 3(7ter) of the Protocol will be applied to the joint assigned amount pursuant to the agreement on joint fulfilment by the European Union, its Member States, Croatia and Iceland and will not be applied to Member States, Croatia or Iceland individually.
- (6) The Council, at its meeting on 15 December 2009, welcomed a request by Iceland to fulfill its commitments under a second commitment period jointly with the European Union and its Member States and invited the Commission to present a recommendation for the opening of the necessary negotiations on an agreement with Iceland that is in line with the principles and criteria set out in the Union's Climate and Energy Package.¹³
- (7) Article 4(1) of the Protocol requires Parties that agree to fulfil their commitments under Article 3 of the Protocol jointly to set out the respective emission level allocated to each of the Parties to the agreement in that agreement. Article 4(2) of the Protocol requires the Parties to a joint fulfilment agreement to notify the Secretariat of the Protocol of the terms of this agreement on the date of deposit of their instruments of ratification or approval.
- (8) On 17 December 2013, the Council authorised the Commission to open negotiations on a joint fulfilment agreement between the European Union, its Member States and Iceland.
- (9) The terms of the agreement to fulfil jointly the commitments of the European Union, its Member States and Iceland under Article 3 of the Kyoto Protocol are laid down in an annex to the Council Decision on the conclusion, on behalf of the European Union, of the Doha Amendment to the Kyoto Protocol to the UNFCCC and the joint fulfilment of commitments thereunder.¹⁴ These same terms are also laid down in an annex to the agreement with Iceland.
- (10) To ensure that Iceland's obligations in the joint fulfilment are laid down and applied in a non-discriminatory manner, treating Iceland and Member States alike, the emission level for Iceland was determined in a way that is consistent both with the quantified emissions reduction commitment inscribed in the third column of Annex B to the Kyoto Protocol (as amended by the Doha Amendment) and with EU legislation, including the 2009 Climate and Energy Package and the principles and criteria on which objectives in that legislation are based.
- (11) Therefore, the agreement should be signed on behalf of the European Union, subject to its conclusion at a later date,

¹¹ Reflected in paragraph 45 of the Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its eighth session, held in Doha from 26 November to 8 December 2012, Part One: Proceedings, Document FCCC/KP/CMP/2012/13.

¹² Council of 17 December 2012 endorsing the statement made by the European Union and its Member States together with Croatia and Iceland at the Doha Climate Conference.

¹³ Council Conclusions of 15 December 2009 on Joint Fulfilment Agreement with Iceland with regard to a future international climate agreement.

¹⁴ [complete reference].

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the European Union of the agreement between the European Union and its Member States and Iceland concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its Member States and Iceland in the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*